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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID G. RIVES and JASON BREWER

Appeal 2011-009319
Application 11/238,197
Technology Center 2600

Before DEMETRA J. MILLS, ERIC GRIMES, and
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal[1] under 35 U.S.C. § 134 involving claims to a method to dispatch service resources. The Examiner rejected the claims as indefinite and as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

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[1] Appellants identify the Real Party in Interest as SBC Knowledge Ventures, L.P. (App. Br. 1) and as AT&T Intellectual Property I, LP (Reply Br. 5).

Statement of the Case

Background

"A communication service provider generally employs a fleet of service personnel or repair crews having a wide variety of skills that address various facets of a large communication network" (Spec. 1 ¶ [0002]). The Specification teaches that "sending an overqualified crew to address simple network issues results in significant money losses. Similarly, dispatching a repair crew that is under-qualified . . . results in significant money losses when a second repair crew must be dispatched" (Spec. 2 ¶ [0004]).

The Claims

Claims 1-34 are on appeal (*see* App. Br. 3). Claim 1 is representative and reads as follows:

> 1. A method to dispatch service resources comprising: receiving a notice of error for a user service;
>
> identifying, using a processor, a non-premises network element (NE) associated with the user service based on a user service identifier, the non-premises NE not being physically located within a customer premises;
>
> querying a network database to identify an equipment control command associated with the identified non-premises NE;
>
> sending the equipment control command to the identified non-premises NE and receiving a response therefrom; and
>
> automatically invoking a dispatch instruction based on the non-premises NE response, wherein the dispatch instruction comprises a service type.

The issues

A. The Examiner rejected claims 1-34 under 35 U.S.C. § 112, second paragraph, as indefinite (Ans. 3).

B. The Examiner rejected claims 1-34 under 35 U.S.C. § 103(a) as obvious over Doherty[2] and Yi[3] (Ans. 4-7).

A. 35 U.S.C. § 112, second paragraph

The Examiner finds that "[c]laims 1-34 recites the limitation 'non-premises network element' in claims 1, 3, 6,-7, [sic] 14, 17-18, 20, 26 and 28-29. There is insufficient antecedent basis for this limitation in the claim" (Ans. 3).

Appellants contend that "the phrase 'non-premises NE' clearly and unambiguously indicates a network element of a network that is not located in the residence or business of a customer. There is nothing indistinct about this term" (App. Br. 11).

We find that Appellants have the better position. We agree with Appellants that the phrase "'non-premises network element'" is reasonably interpreted as network elements not located on the premises of the customer and we agree with the reasoning of Appellants (*id.*).

B. 35 U.S.C. § 103(a) over Doherty and Yi

The Examiner finds that Doherty teaches

> [T]o dispatch service resources comprising: receiving a notice of error for a user service (col. 9 lines 20-25); identifying, using a processor, equipment associated with the user service based on a user service identifier (col. 9 lines 34-40); and automatically executing the dispatch instruction in response to the equipment analysis, wherein the dispatch instruction comprises a service type

[2] Doherty et al., US 6,735,293 B2, issued May 11, 2004.
[3] Yi et al., US 2002/0181664 A1, published Dec. 5, 2002.

(Ans. 4). The Examiner finds that Doherty teaches "an element manager 56 that monitors all CPEs as well as **network components (i.e., non-premises network elements** (elements that located outside of the customer premises)) and report faults that raises alarms to the service provisioning and service assurance system (SPA) and using remote control functionality to resolve faults" (*id.*). The Examiner finds that while Doherty does not teach "querying a network database to identifying an equipment control command associated with the identified non-premises network element; and sending the equipment control command to the identified non-premises NE and receiving a response therefrom. However, Yi et al suggested such" (*id.*).

The Examiner finds it obvious to "incorporate the teaching of Yi et al into view of Doherty et al in order to properly perform testing and maintaining of the network topologies" (*id.* at 5).

The issue with respect to this rejection is: Does the evidence of record support the Examiner's conclusion that Doherty and Yi render the claims obvious?

Findings of Fact

1. Doherty teaches

> An automated system coordinates . . . installation of customer premise equipment (CPE) for telecommunications services and provides continuing service assurance. The system verifies equipment availability on service request, schedules a qualified technician to install the CPE, and assigns distribution equipment resources to the CPE. . . . The equipment resources are auto-assigned to the CPE to facilitate installation procedures. The system also autodetects installation of the CPE and auto-enables service when the CPE is installed. Customer record creation and maintenance is automatic, and installation or operation of

> unauthorized equipment is inhibited. Post-installation monitoring and automatic scheduling of repair for system or equipment faults ensures continuing service assurance. The advantage is reduced service delivery time, reduced operations costs and increased customer satisfaction.

(Doherty, abstract.)

2. Doherty teaches error detection where "the element manager **56** . . . monitors the status of the service distribution equipment **28**, the CPEs **40**, the broadband optical switch **18**, and other system components used to deliver telecommunications services to the customer **12**. The element manager **56** routinely detects faults and generates alarms" (Doherty, col. 9, ll. 20-26).

3. Doherty teaches that an "element manager **56** monitors all CPEs **40** and other network components to detect and report hardware and software faults and raise alarms" (Doherty, col. 5, ll. 13-16).

4. Doherty teaches "the SPA **50** also monitors alarms respecting service distribution equipment **28** . . . as well as other system components, and follows similar procedures to correct faults using remote control functionality as described above, and schedules and dispatches technicians for repair, if necessary" (Doherty, col. 10, ll. 13-18).

5. Doherty teaches that it "should be further noted that with respect to network components used for delivery of services, the scheduling of repairs is based on an urgency level determined by the type and level or [sic, of?] alarm" (Doherty, col. 10, ll. 18-21).

6. Doherty teaches that if "a component failure occurs that affects service to a plurality of customers, standby technicians may be scheduled to perform repairs on an immediate basis" (Doherty, col. 10, ll. 21-24).

7. Doherty teaches that if "the alarm exceeds the predetermined threshold and it is determined that the alarm relates to a CPE **40** (FIG. **1**), the terminal address card and port number of the CPE are used to retrieve the customer record" (Doherty, col. 9, ll. 33-36).

8. Yi teaches that:

> A test set for testing an IDSL communications line is also disclosed and includes an interface circuit for interfacing with an IDSL communications line. A processor is connected to the interface circuit and transmits a query command along the IDSL communications line and queries transmission elements sequentially along the communications line and identifies the configuration of the IDSL communications line based on the received responses.

(Yi 1 ¶ 0011.)

9. Yi teaches that the "method can be embodied in a software algorithm as part of a testing device. . . . Any changes in the current configuration of the IDSL circuit from the initial reading is dynamically updated in real time" (Yi 3 ¶ 0028).

Principles of Law

"'[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."' *KSR Int'l Co. v. Teleflex Inc*., 550 U.S. 398, 418 (2007) citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Analysis

Doherty reasonably teaches a method to dispatch resource services where a notice of an error is received (FF 2), a non-premises network element is identified (FF 4) and suggests using service identifiers to determine the component (FF 7). Doherty further teaches dispatching a service provider based on the specific component problem (FF 1, 5, 6). Yi teaches sending a query command to a network element and receiving a response to determine the operational status of the network element (FF 8). All of the independent claims also include a step of "querying a network database."

However, regarding the claim step of "querying a network database to identify an equipment control command associated with the identified non-premises NE [network element]," the Examiner finds that "Yi et al inherently must perform some form of querying to obtain the proper commands in order to queries [sic] transmission elements (i.e., sending request or command to transmission elements) to elicit a response within a period time" (Ans. 10).

Appellants contend that

> Rather than query a network database to identify an equipment control command associated with the identified non-premises NE, Yi appears to assume that any attempts to query the transmission elements will include the proper command(s). Yi makes no reference to a database, or one that identifies an equipment control command

(Reply Br. 8).

We find that Appellants have the better position. The Examiner acknowledges that Doherty "did not clearly suggest of [sic] querying a network database" (Ans. 4). The Examiner provides no evidence that Yi performs this step, and provides no evidence or argument that the step of "querying a network database to identify an equipment control command" would have been obvious to the person of ordinary skill.

Instead, the Examiner relies upon Yi to inherently perform the querying step (*see* Ans. 10). However, as Appellants point out, "Yi appears to presuppose that the proper equipment control command is known during sequential queries of the IDSL circuit. In fact, Yi makes no reference to a database, or one that identifies an equipment control command" (App. Br. 16). While we do not dispute that querying a database might be one mode by which an ordinary artisan might obtain the equipment control command for testing the functionality of a network element, there are multiple different ways by which the equipment control command might be presented to the processor, including as a dedicated file, a library of documents, as data in a memory storage device, without the use of a database.

Thus, the Examiner has not satisfied the burden of providing evidence that the prior art taught or suggested the step of "querying a network database," nor has the Examiner satisfied the burden of providing evidence that the prior art necessarily inherently relied upon a database. *See MEHL/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 1999) ("Inherency ... may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient.")

Conclusion of Law

The evidence of record does not support the Examiner's conclusion that Doherty and Yi render the claims obvious.

SUMMARY

In summary, we reverse the rejection of claims 1-34 under 35 U.S.C. § 112, second paragraph, as indefinite.

We reverse the rejection of claims 1-34 under 35 U.S.C. § 103(a) as obvious over Doherty and Yi.

REVERSED

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